



Paper No. 17

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**DEC 03 2003**

**OFFICE OF PETITIONS**

In re Application of  
Jacques M. Dulin et al.  
Application No. 09/845,016  
Filed: April 27, 2001  
Attorney Docket No. 24347-051US

: DECISION ON PETITION  
: UNDER 37 CFR 1.78(a)(3)  
:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed September 29, 2003, by facsimile transmission, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of prior-filed nonprovisional Application No. 09/325,242, filed June 3, 1999.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2) of the prior-filed application, unless previously submitted;<sup>1</sup>

(2) the surcharge set forth in § 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The present pending application was filed on April 27, 2001, and was copending with

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<sup>1</sup>Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS) to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate. (see § 1.14).

the above-noted, prior-filed nonprovisional application, at the time of filing, for which priority is claimed. A reference to the above-noted, prior-filed nonprovisional application has been included in an amendment to the first sentence of the specification following the title, which was filed May 12, 2003, by facsimile transmission, under 37 CFR 1.78(a)(3).

The present nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after the expiration of the period specified in 37 CFR 1.78(a)(2). Also, the reference to the prior-filed nonprovisional was submitted during the pendency of the nonprovisional application for which the benefit is sought. See 35 U.S.C. § 120. Accordingly, having found that the present petition satisfies the conditions of 37 CFR 1.78(a)(3) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. § 120, the petition to accept an unintentionally delayed claim to benefit to prior-filed Application No. 09/325,242 is granted as of the date of filing the petition.

A corrected Filing Receipt which includes the priority claim to the above-noted, prior filed nonprovisional application accompanies this decision on petition.

As authorized, the \$1,300.00 fee required by 37 CFR 1.78(a)(3) has been charged to counsel's deposit account.

The application is being forwarded to Technology Center Art Unit 3661 for processing the amendment filed on May 12, 2003, and for consideration by the examiner of the claim under 35 U.S.C. § 120 and 37 CFR 1.78(a)(3) for the benefit of the above-noted, prior filed nonprovisional application.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703) 305-4497.



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Office of Petitions

ATTACHMENT: Corrected Filing Receipt